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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/373,141

Applicant(s)

ISSA, GABRIEL N.

Examiner

Elda Milef

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-63 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-63 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shkedy (US 6,260,024) in view of Applicant's admitted prior art in specification (SEE page 1 , line 12 to page 2, line 17) .

With regard to claim 1 Shkedy suggest a method for conducting an online auction of a monetary amount for a specified category of items (SEE Shkedy column 1 , lines 7-16 ; "sellers over a network"... "such as the internet", column 3, lines 54-57 "A seller will be selected whose bid is the best. e.g. lowest price" and further see column 5, lines 9-10 " buyer selects a category of goods or service to be purchased".),

the method comprising: receiving at a computer site at least one bid having a discount rate for the specified category

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of items being auctioned from a plurality of sellers registered to participate in the auction (SEE Shkedy column 1, lines 7-16 , "method for facilitating a transaction between a plurality of buyers, an intermediary, and a plurality of sellers over an electronic network.", column 7, lines 21-25 , "buyers could indicate a minimum discount off the maximum offer price provided by the central controller 200 that a buyer would be willing to accept. The seller would then be notified of a maximum price he had to beat in order to bid. [it is obvious to one of ordinary skill that this language is suggestive of a seller needing to be able to figure out what the BID price needs to be in order to meet the "minimum discount off" as suggested by Shkedy in order to have a successful bid and sellers are motivated to do what ever it takes to make a sale as long as they can make some profit of the volume of sales.], and see column 6, lines 16-18

"the seller may be required to provide qualifications in order to view the PPOS of a given category" and column 10, lines 20-21 "Upon registration, the seller may be required to demonstrate evidence of ability to deliver on goods in each category" and in addition see column 7, line 26-41 whereby it teaches an example wherein the whole category of Office Supply is discounted 5% for a collective buyer pool is pre-negotiated

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and see column 10 lines 19-20 "discount schedule for large quantities etc.")

receiving at the computer site a commitment to buy within the specified category of items at a minimum discount rate from at least one buyer registered to participate in the auction (SEE Shkedy column 8, lines 49-50, "A buyer is able to communicate his commitment to the pool" , column 7, lines 21-25 , "buyers could indicate a minimum discount off the maximum offer price provided by the central controller 200 that a buyer would be willing to accept" . column 3, lines 5-8, "Another object of the present invention is to allow an intermediary to bind all buyers to the pool before the sale or bidding occurs", SEE column 5, lines 55-60, "The buyer has now consented to entering into a legally binding contract with the intermediary and will accept the best price that the intermediary determines in the bidding process subject to the condition that the buyer will pay no more for the item or service than the stipulated maximum offer price.", SEE column 10 , lines 1-8 , "Buyer database 255 maintains data on buyers with fields such as name, address, telephone number, credit card number, ID number, social security number, electronic mail address, smart card ID, credit history, public/private key information etc. This information is obtained when the buyer first registers with the system")

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and declaring at least one successful seller of the value amount for the specified category of items based on the bid from the successful seller or, sellers having the greatest discount rate greater than or equal to the minimum discount rate and best meeting the buyer's individual conditions. (SEE Shkedy column 3, lines 54-57 "A seller will be selected whose bid is the best. e.g. lowest price" [It is inherent that the seller with the "lowest price" would effectively also have the "'greatest discount rate'" in the Shkedy method and would have been a simple matter of math to figure out what the actual discount is based on what the lowest bid price was and a seller using the Shkedy method would have been motivated to in addition to telling the buyer what the lowest price bid was tell the buyer what discount that price inherently represents for example 75 % off because that is a positive inherent fact about the lowest price and buyer is more likely to be happy with his purchase when he knows how much that lowest price saves him), SEE column 5, lines 12-14, "At step 44, the buyer 16 adds a quantity specified along with any other required buyer specified conditions", SEE column 7, lines 21-25 , "buyers could indicate a minimum discount off the maximum offer price provided by the central controller 200 that a buyer would be willing to accept"

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With further regard to claim 1 Shkedy does not directly teach his method whereby, "A seller will be selected whose bid is the best. e.g. lowest price" is a type of "auction" as explicitly claimed in the preamble.

Applicant teaches in his admitted prior art sections about a "reverse type auction" which reads on Shkedy's above stated method. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Shkedy title of his method "A GLOBAL BILATERAL BUYER-DRIVEN SYSTEM" and simply just call it a "REVERSE AUCTION" as suggested by applicant's admitted prior art because one would have been motivated to call it "a reverse type auction" when advertising the auction because that was the standard phrase used for this type of auction and therefore the buying public would then be more likely to participate in the auction they clearly understand.

With regard to claim 2 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 wherein a commitment to buy an undiscounted value amount at a minimum discount rate is received from each of a plurality of buyers and wherein the method further comprises pooling the plurality of buyers to obtain various pooled award amounts and

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wherein the at least one successful seller is declared of his respective pooled award amount for the specified category of items (SEE Shkedy column 2, lines 43-67 ).

With regard to claim 3 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 wherein the items are products (SEE Shkedy column 2, lines 43-67).

With regard to claim 4 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 wherein the items are services (SEE Shkedy column 2, lines 43-67)

With regard to claim 5 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 2 wherein the plurality of buyers are independent and/or unrelated (SEE Shkedy column 2, lines 43-67).

With regard to claim 6 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 2 further comprising receiving at the computer site information representing a minimum award amount or predefined sequence of minimum award amounts corresponding to a predefined sequence of discount bids that each seller is willing to accept from the pooled buyers for a given category (SEE Shkedy column 7, lines 21-25, and column 29, lines 25-column 32, line 10).



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With regard to claim 7 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 2 further comprising receiving at the computer site information representing a maximum award amount that a seller is capable of accepting and willing to accept from the pooled buyers (SEE Shkedy column 17, line 23-column 18, line 36).

With regard to claim 8 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 further comprising receiving at the computer site information representing a method of guaranteeing the value amount from the at least one buyer (SEE Shkedy column 22, line 61-column 23, line 50 ).

With regard to claim 9 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 wherein at least one seller is pre approved to sell the specified category of items (SEE Shkedy column 23, line 51-column 24, line 45).

With regard to claim 10 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 further comprising receiving at the computer site information representing any sellers unacceptable to the at least one buyer (SEE Shkedy column 3, line 1-column 4, line 59 ).

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With regard to claim 11 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 wherein the computer site is a Web site (SEE Shkedy column 1, line 31-column 2, line 23).

With regard to claim 12 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 wherein the auction is a reverse auction (SEE Shkedy column 21, line 3-column 22, line 25 )

With regard to claim 13 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 wherein the auction ends a fixed period of time after the auction begins (SEE Shkedy column 22, line 61-column 23, line 28 ).

With regard to claim 14 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 further comprising receiving at the computer site a command from the at least one buyer to try to end the auction for the at least one buyer wherein a successful seller of the value amount for the at least one buyer can be declared before the preset auction expiration time (SEE Shkedy column 25, line 20-column 26, line 45 ).

With regard to claim 15 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in

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claim 1 further comprising receiving at the computer site a command from the at least one buyer to try to end the auction for the at least one buyer wherein a successful seller of the value amount for the at least one buyer can be declared before the end of the auction (SEE Shkedy column 26, lines 46-64).

With regard to claim 16 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 wherein the successful seller is determined by the buyer's pre-defined conditions (SEE Shkedy column 27, line 8-column 27, line 62 ).

With regard to claim 17 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 wherein the seller with the highest bid for discount rate is the successful seller (SEE Shkedy column 28, line 62-column 29, line 18).

With regard to claim 18 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 wherein there is more than one successful seller for a given auction (SEE Shkedy column 29, line 25-column 32, line 10 ).

With regard to claim 19 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in

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claim 1 wherein a buyer account is assigned to the registered buyer (SEE Shkedy column 6, line 18-column 7, line 4).

With regard to claim 20 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 19 wherein the buyer account includes various inter-linked sub-accounts (SEE Shkedy column 17, lines 23-60 ).

With regard to claim 21 the combination of Shkedy and Applicants admitted prior art teaches 21 the method as claimed in claim 20 wherein the sub-accounts are linked to at least one external account of the registered buyer held by a financial institution (SEE Shkedy column 18, lines 23-36).

With regard to claim 22 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 21 wherein the buyer's funds can be transferred between the various sub-accounts and also between the sub-accounts and external accounts held by other financial institutions (SEE Shkedy column 20, line 21-35).

With regard to claim 23 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 22 wherein the registered buyer can transfer funds or reassign buying power amounts to the account of another registered buyer or a registered seller (SEE Shkedy column 21, lines 3-45 ).

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With regard to claim 24 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 wherein a seller account is assigned to each registered seller (SEE Shkedy column 21 , line 52-column 22, line 25 ) .

With regard to claim 25 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 24 wherein the seller account includes various inter-linked sub-accounts (SEE Shkedy column 3, line 1-column 4, line 59, and column 17, line 23-column 18, line 36 ).

With regard to claim 26 the combination of Shkedy and Applicants admitted prior art teaches 26. The method as claimed in claim 25 wherein the sub-accounts are linked to at least one external account of the at least one seller held by a financial institution (SEE Shkedy column 21, lines 3-45 ).

With regard to claim 27 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 26 wherein the seller's funds can be transferred between the various sub-accounts and also between the sub-accounts and external accounts held by other financial institutions (SEE Shkedy column 21, line 52-column 22, line 7 ).

With regard to claim 28 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in

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claim 27 wherein the at least one registered seller can transfer funds or reassign buying power amounts to the account of another registered buyer or a registered seller (SEE Shkedy column 22, line 8-25 ).

With regard to claim 29 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 wherein the step of receiving at least one bid includes receiving a bidding table for at least one seller in which the at least one seller commits to a sequence of bids corresponding to a sequence of value amounts for a given category (SEE Shkedy column 22, line 61-column 23, line 50 ).

With regard to claim 30 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 wherein each of the sellers is pre approved to sell the specified category of items (SEE Shkedy column 23, line 51-column 24, line 45 ).

With regard to claim 31 the combination of Shkedy and Applicants admitted prior art teaches the method as claimed in claim 1 wherein the auction ends an undetermined period of time after the auction begins (SEE Shkedy column 17, line 23-column 18, line 36 ).

With regard to apparatus claim 32 the combination of Shkedy and Applicants admitted prior art was found already above in

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method claim 1 to read on most of the limitations of apparatus claim 32 and in addition the applicant is claiming a computer site for conducting an online auction (See Shkedy figure 1 item 200 "CENTRAL CONTROLLER" which reads on computer site), a set of related documents and associated files (SEE Shkedy figure 1, item 265, "PPO DATABASE" where documents and files are stored also see figure 2 item 250 "DATABASE STORAGE DEVICE"), and a server for serving up the set of related documents and associated files to a plurality of I/O devices to provide buyers and sellers with capability to participate in the auction (see Shkedy figure 1 item 200 "CENTRAL CONTROLLER" which reads on server also see column 5, lines 5-6 "'The central controller 200 is preferably located at a remote server'") the server being programmed with application software to (it is essential to proper that a server be programmed with application software)

With regard to claim 33 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein a commitment to buy an undiscounted value amount at a minimum discount rate is received from each of a plurality of buyers and wherein the server is further programmed to pool the plurality of buyers to obtain various pooled award amounts and wherein the at least one successful

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seller is declared his respective pooled award amount for the specified category of items (SEE Shkedy column 2, lines 43-67 ).

With regard to claim 34 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein the items are products (SEE Shkedy column 2, lines 43-67).

With regard to claim 35 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein the items are services (SEE Shkedy column 2, lines 43-67 ).

With regard to claim 36 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 33 wherein the plurality of buyers are independent and/or unrelated (SEE Shkedy column 2, lines 43-67).

With regard to claim 37 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 33 further comprising receiving at the computer site information representing a minimum award amount or predefined sequence of minimum award amounts corresponding to a predefined sequence of discount bids that each seller is willing to accept from the pooled buyers for a given category (SEE Shkedy column 7, lines 21-25, and column 29, line 25-column 32, line 10 ).



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With regard to claim 38 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 33 further comprising receiving at the computer site information representing a maximum award amount that a seller is capable of accepting and willing to accept from the pooled buyers (SEE Shkedy column 17, line 23-column 18, line 36 ).

With regard to claim 39 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein the server is further programmed to receive information representing a method of guaranteeing the value amount from the at least one buyer (SEE Shkedy column 22, line 61-column 23, line 50).

With regard to claim 40 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein at least one seller is pre-approved to sell the specified category of items (SEE Shkedy column 23, line 51-column 24, line 45 ).

With regard to claim 41 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein the server is further programmed to receive information representing any sellers unacceptable to the

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at least one buyer (SEE Shkedy column 3, line 1-column 4, line 59 ).

With regard to claim 42 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein the computer site is a Web site (SEE Shkedy column 1, line 31-column 2, line 23).

With regard to claim 43 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein the auction is a reverse auction (SEE Shkedy column 21 , line 3-column 22, line 25).

With regard to claim 44 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein the auction ends a fixed period of time after the auction begins (SEE Shkedy column 22, line 61-column 23, line 28 ).

With regard to claim 45 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 further comprising receiving at the computer site a command from the at least one buyer to try to end the auction for the at least one buyer wherein a successful seller of the value amount for the at least one buyer can be declared before the preset auction expiration time (SEE Shkedy column 25, line 20-column 26, line 45).

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With regard to claim 46 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein the server is further programmed to receive a command from the at least one buyer to try to end the auction for the at least one buyer wherein a successful seller of the value amount for the at least one buyer can be declared before the end of the auction (SEE Shkedy column 26, lines 46-64).

With regard to claim 47 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein the successful seller is determined by the buyer's pre-defined conditions (SEE Shkedy column 27, line 8-column 27, line 62).

With regard to claim 48 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein the seller with the highest bid for discount rate is the successful seller (SEE Shkedy column 28, line 62-column 29, line 18 ).

With regard to claim 49 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein there is more than one successful seller for a given auction (SEE Shkedy column 29, line 25-column 32, line 10).

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With regard to claim 50 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein a buyer account is assigned to the registered buyer (SEE Shkedy column 6, line 18-column 7, line 4 ).

With regard to claim 51 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 50 wherein the buyer account includes various inter-linked sub-accounts (SEE Shkedy column 17, lines 23-60 ).

With regard to claim 52 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 51 wherein the sub-accounts are linked to at least one external account of the registered buyer held by a financial institution (SEE Shkedy column 18, lines 23-36 ).

With regard to claim 53 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 52 wherein the buyer's funds can be transferred between the various sub-accounts and also between the sub-accounts and external accounts held by other financial institutions (SEE Shkedy column 20, lines 21-35).

With regard to claim 54 the combination of Shkedy and Applicants admitted prior art teaches the computer site as

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claimed in claim 53 wherein the registered buyer can transfer funds or reassign buying power amounts to the account of another registered buyer or a registered seller (SEE Shkedy column 21, lines 3-45 ).

With regard to claim 55 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein a seller account is assigned to each registered seller(SEE Shkedy column 21, lines 52-column 22, line 25).

With regard to claim 56 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 55 wherein the seller account includes various inter-linked sub-accounts (SEE Shkedy column 3, line 1-column 4, line 59, and column 17, line 23-column 18, line 36 ).

With regard to claim 57 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 56 wherein the sub-accounts are linked to at least one external account of the at least one seller held by a financial institution (SEE Shkedy column 21, lines 3-45 ).

With regard to claim 58 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 57 wherein the seller's funds can be

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transferred between the various sub-accounts and also between the sub-accounts and external accounts held by other financial institutions (SEE Shkedy column 21 , line 52-column 22, line 7 ).

With regard to claim 59 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 58 wherein the at least one registered seller can transfer funds or reassign buying power amounts to the account of another registered buyer or a registered seller (SEE Shkedy column 22, lines 8-25 ).

With regard to claim 60 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein the server is further programmed to receive a bidding table for at least one seller in which the at least one seller commits to a sequence of bids corresponding to a sequence of value amounts for a given category (SEE Shkedy column 22, line 61-column 23, line 50 ).

With regard to claim 61 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein each of the sellers is pre-approved to sell the specified category of items (SEE Shkedy column 23, line 51-column 24, line 45 ).

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With regard to claim 62 the combination of Shkedy and Applicants admitted prior art teaches the computer site as claimed in claim 32 wherein the auction ends an undetermined period of time after the auction begins (SEE Shkedy column 17, line 23-column 18, line 36 ).

6. Claim 63 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shkedy in view of Applicant's admitted prior art and "ECOMMERCE / BUYING SERVICE COUNTS ON STRENGTH IN NUMBERS" THE WASHINGTON POST. Newsday (combined editions).

With regard to apparatus claim 63 the combination of Shkedy and Applicants admitted prior art was found already above in claims 1-62 to read on most of the limitations of apparatus claim 63 .

The combination of Shkedy and Applicants admitted prior art does not directly teach "negotiating discount credits between sellers offering at least one pre-defined category of goods or service items and buyers wishing to purchase goods or service items selected from said category" and "buyers in communicating willingness to purchase items selected from a pre-defined category at a negotiated category discount". Shkedy instead only teaches of a single seller in column 7, line 26-41 an example wherein the whole category of Office Supply is discounted 5% for a collective buyer pool is pre-negotiated and

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also see Shkedy column 10 lines 19-20, "discount schedule for large quantities etc."

THE WASHINGTON POST teaches; "Instead of making consumers compete, as they do in auctions, Accompany allows them to cooperate by negotiating volume discounts on their behalf. Prices drop as more buyers sign up"..... "How will it work? Say you want a Palm Pilot. You go to www.accompany.com and find a "buy cycle" for a particular model. That's what Accompany calls the period of time an item is offered, and it is illustrated with a graphic showing the current number of committed buyers, the SCHEDULE OF DISCOUNTS that will kick in as more people join the group and the time remaining."

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Shkedy and Applicants admitted prior art to pre-negotiate with multiple sellers as suggested by THE WASHINGTON POST because to do so will increase the chances of getting the best discount.

In addition Shkedy teaches "a first interface" in figure 1 item 350 "SELLER MODEM" and a second interface item 300 "SELLER INTERFACE", with further regard to claim 63 the auction system further having a compilation system that analyzes the bid



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data to present information to sellers through the second interface indicative of the aggregate commitment amounts associated with different requested discounts (see THE WASHINGTON POST "That's what Accompany calls the period of time an item is offered, and it's illustrated with a graphic showing the current number of committed buyers, the SCHEDULE OF DISCOUNTS that will kick in as more people join the group and the time remaining.")

### ***Response to Arguments***

Applicant's arguments filed May 16, 2005 have been fully considered but they are not persuasive.

Regarding § 103 rejection.

Regarding Applicant's argument that Shkedy does not disclose the sellers competing by offering the best "discount rate" and "receiving at a computer site at least one bid having a discount rate" cited in claim 1 in the Applicant's response to the Examiner's previous action, the Applicant differentiates his reverse auction system from the prior art based upon the use of a "discount rate" rather than a "discounted amount." Shkedy discloses " A seller will be selected whose bid is the best e.g. lowest price"(col.3 lines 54-57) and "buyers could indicate a minimum discount off the maximum offer price".(col. 7, lines 21-

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25). It is inherent that to ultimately arrive at a discounted amount, a seller must apply a discount rate to the original sales price. Sellers are aware of what price they have paid for items and what price they are willing to sell the items for. The "discount" is merely applied to sale price before bidding. A seller will not bid on a selling price without considering the discount passed onto the buyer. A seller wants to make a profit on the items or services they are bidding on, to do otherwise would be against the seller's best interest. Therefore, the prior art references disclose the applicant's invention.

Regarding claim 32, as addressed by previous examiner, the Shkedy reference is in effect, a online auction. The Shkedy reference has all of the characteristics of an online auction. Claim 32 has similar limitations found in claim 1 and therefore was rejected by the Examiner on the same grounds. The limitations not found in Claim 1 but cited in claim 32: "a set of related documents and associated files; and a server for serving up the set of related documents and associated files to a plurality of I/O devices to provide buyers and sellers with capability to participate in the auction, the server being programmed with application software to:" are addressed in this

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office action pages 13-14 and are rejected are being unpatentable under Shkedy.

Regarding claim 63, the cited article "E-Commerce/ Buying Service Counts on Strength in Numbers" references Accompany Inc. Accompany Inc. is a company that negotiates volume discounts on behalf of a pool of buyers using the internet. To do so, Accompany, Inc. must solicit information from buyers such as the maximum price that the buyer is willing to pay (see page 2, para. 1). This information is then analyzed and displayed "illustrated with a graphic showing the current number of committed buyers, the schedule of discounts that will kick in as more people join the group and the time remaining." (see page 1, full text para. 9). It does not state in the reference that the sellers are not privy to this information. In fact, it is inherent that this information is shown to the seller in order for Accompany, Inc. to make any kind of negotiation possible.

With regard to claim 63 and the Applicant's argument that the Washington Post reference does not teach or suggest pre-negotiating "with multiple sellers" but rather suggests a method for buyers to cooperate by "negotiating volume discounts." The Examiner disagrees with this argument because the whole premise behind establishing Accompany Inc. was to offer buyers the best possible price for an item. In order to get this best possible

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price, it is inherent that Accompany, Inc. solicits bids from multiple sellers.

In response to Applicant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. *In re McLaughlin*, 443 F.2d 1392; 170 USPQ 209 (CCPA 1971).

### **Conclusion**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elda Milef whose telephone number is (571)272-8124. The examiner can normally be reached on Monday - Friday 9:15 am to 5:45 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung Sough can be reached on (571)272-6799. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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